1950. **File No.** L.R.C. Bom II/50 (Q)

Legal Department

B **BRANCH**

Subject:— Rules under the Bombay Land Revenue Code 1879.

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L.R.C Bom II/50 (Q)

File No.

Gen. 194

261-B

Office of the R.L.A.

In place of the draft at page 161 ante, a revised draft notification is sent herewith.

2. Although the wording of section 62 of the Bombay Land Revenue Code is wide, that section would be subject to the provisions of section 73 which provides that an occupancy shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the tenure, and save as otherwise prescribed x by law, be deemed as heritable and transferable property. Under this section an occupancy is heritable and transferable and no condition under section 62 can be attached that the occupancy shall not be heritable and transferable. Rule 84A and amendments proposed in Form F, Form H, Form HH and Appendix O.H. have accordingly been suitably amended.

3. The Department may verify whether the revised amendments carry out its intention in other respects.

Id/-J.R.D. 13/6
Additional Secretary to Government.

U.R. to R.D. No. 8033 dated 14th June 1950.

BKS. 16/6/ 4c.

PGK 19/6

Legal Department.

The Revenue Department has unnecessarily mixed up the question of the power of Government to suspend or remit land revenue under the Bombay Land Revenue Code with the question of the power to reduce the full non-agricultural assessment leviable in respect of land diverted from the agricultural to non-agricultural use.

2. It is already pointed out in paragraph 3 of Opinion No.12682 dated 10th November 1949 that under rule 43 of the Land Revenue Rules read with section 48 of the Bombay Land Revenue Code, land for building site is to be granted in accordance with the provisions of that rule. It is provided in that rule that where the land is already been assessed for agriculture, assessment shall be altered under whichever of rules 81 to 85 has been applied to the locality. It is further provided in that rule that where the land has not been assessed, the Collector shall fix the assessment in accordance with the principle laid down for alteration of assessment in rule 81 to 86 and the provisions of the said rules shall, as far as may be, apply. It was with reference to the provisions of the said rule 43 read with the provisions of rules 81 to 85 that it was advised that so long as no rule is made empowering the Government to reduce the full non-agricultural assessment leviable in respect of land used for non-agricultural purposes in the State of Bombay other than the land in the Bombay Suburban District it would not be legally feasible for the Collector to levy such reduced assessment. In the absence of any specific rule to that effect the provisions of rule 43, which are of a mandatory character, will operate and the Collector will have no discretion to levy any reduced non-agricultural assessment. So far as the proposals in this file are concerned, the object inview would be achieved by amending rule 82 of the Bombay Land Revenue Rules as

in the appended draft. Under the draft rule, the power is taken enabling Government to specify the reduced rate in respect of the area in the Bombay Suburban District to which rule 82 has already been applied and in respect of any other area in the State of Bombay to which the said rule 82 will be made applicable. The power also is taken to exclude the land used for commercial or industrial purposes from the scope of the rule. From the provisions of rule 87 it is clear that the non-agricultural assessment which has already been fixed for a term of years will continue to be so levied till the expiry of such term and whatever new reduced rates Government will fix under the rule as amended would apply to land in other cases. In view of rule 87 it is not necessary to make any saving provision in respect of any land used for residential or commercial or industrial purposes in the Bombay Suburban District or the city of Ahmedabad and its adjoining areas. After the rule is amended, Government will have to apply rule 82 to areas in the State of Bombay in which it is not so applied, on account of there being a keen demand for building sites or for any other special purposes and then in virtue of the provisions of sub-rule VI of rule 82 will have to specify under a notification the reduced rate of non-agricultural assessment.

The proportion of built up area of the land may be fixed under executive instructions as advised by the R.L.A. in his opinion No.594 dated the 17th January 1948.

Id/-J.R.D. 9/8
Additional Secretary to Government.

U.R. to R.D.No. 11338 dated the 9th August 1950.

BKS. 16/6/ 4c.

Legal Department.

In R.D. note at p.177 ante, reference is made to R.L.A.'s opinion in U.R. to R.D. No.5385 dated the 1st May 1946. It is true that in the said opinion reliance is placed on section 62 of the Bombay Land Revenue Code and it is stated that as the said section empowers the Collector to annex such conditions to the grant of an unoccupied land as he deems fit, it would be open to him to provide that the land granted shall not be alienated without his permission. The reference to section 62 of the Code in that opinion is not quite correct. The whole question was discussed when the Bombay Land Revenue Code was amended by Bombay Act VI of 1901. Before the amendment was made the Law officers were of opinion that a person to whom permission to occupy land had been granted would acquire, if a Survey Settlement had been extended to the land, nothing short of a right of occupancy in perpetuity, hereditery and transferrable; and that even if a Survey Settlement had not been extended to the land he would acquire a hereditery and transferrable right, but in that case restricted tothe period for which permission to occupy the land had been given. (See Bombay Government/ letter No.9 dated the 11th May 1901 to the Secretary of State). This was remedied by the addition of the proviso to section 68 and the ~~insxrix~~ insertion of section 73A. In view of these provisions, in cases where unoccupied land is being granted on concessional terms, it would be legal to provide that the land was unalienable without the sanction of Government. The conditions proposed by R.D. are incorporated in the fresh draft appended herete.

Id/-J.R.D. 14/9
Additional Secretary to Government.

U.R. to R.D. No. 13373, dated the 20th September 1950.

BKS. 16/6/ 4c.

Legal Department.

Under sub-rule (3) of rule 81 of the Bombay Land Revenue Rules the Collector is already invested with the power to levy a rate higher than the maximum rate. This power is, however, subject to the previous sanction of the State Government (which authority now gets this power under the Bombay Commissioners (Abolition of Office) Act, 1950). As it is proposed to do away with the previous sanction, the rule in question requires to be ~~xxxx~~ amended under section 214 of the Bombay Land Revenue Code. The provisions of section 3 of the Bombay Commissioners (Abolition of Office) Act, 1950 would not be attracted. A revised draft notification is sent herewith.

Id/-J.R.D. 13/11
Additional Secretary to Government.

U.R. to R.D. No. 15852 ,dated the 14th November 1950.

BKS. 16/6/ 4c.

Legal Department.

A revised draft notification is sent herewith. There is no provision in the Bombay Land Revenue Code under which a rule can be made for imposing fine upon a person for making use of water without the previous permission of the Collector. The provision which Revenue Department proposes to insert in rule 70-D for the levying of fine for unauthorised use of water has therefore been omitted in the revised draft notification.

Id/-J.R.D. 28/12
Additional Secretary to Government.

U.R. to R.D. No. 18423, dated the 29th December 1950.

BKS. 16/6/ 4c.